

**General Permit for Discharges of Stormwater from Construction Activities**  
**Pre-TAC Interviews**  
**July 18, 2008**

Conducted by Frank Dukes of 17 TAC members

This is a summary of the interviews conducted prior to the July 22 meeting of the TAC. No effort was made to delineate the numbers of people supporting any individual comment, and many of these reflect a synthesis of several related comments.

NOTE: Some individuals have submitted written comments to DCR that were of too great a length to be included within this document; however, an effort was made to include key themes within those comments.

**General Thoughts about the TAC Process**

- The TAC is a welcome investment by DCR as well as an alternative to the standard regulatory process.
  - *The TAC should be used as an opportunity for actually developing the regulations, rather than coming in with minds made up about what should be included in a proposed regulation.*
  - *This is an opportunity to change a permit that has a lot of problems in ways that can prevent substantial conflict further down the road.*
- Make sure that all issues are considered – this is an opportunity for us to learn from one another and for DCR to learn from us.
  - *It is important to have discussion of key issues in front of the whole TAC and for all key elements to be thoroughly considered with full explanations, rather than individual discussions with Board or agency leadership. This needs to be an open and full discussion.*
  - *I hope to have a greater understanding of the process so that I can help my own staff.*
- Make clear what is a non-starter and why that is the case, without blocking discussion of important issues. Explain and delineate what is covered by the other stormwater TAC so that we don't waste our time here. At the same time, focus on the issues at hand rather than tangential issues.
- This is an opportunity to reach consensus on what the new regulation should look like, rather than having people frustrated at DCR doing this on their own.
  - *Let's not get into a contest between the environmental and engineering groups.*
  - *Can we be flexible to allow for ingenuity to achieve the results that we want?*
- Use the TAC to bring rational input into the program.

- Focus on making implementation and enforcement simple and clear for everybody.
- It is absolutely essential that EPA Region 3 staff attend these meetings in some manner

### **Questions and Information Needs**

- What is DCR's intent – what would they like to see happen?
  - Can DCR provide a comparison of what is happening now with the regulation, including a clear list of what is required, and how these apply to public versus private projects, and a separate list of what changes are being considered, in a clear format?
  - How open to change is DCR? How much change will be sought? Will this be a major revision like Maryland is going through now?
  - What is happening with the federal permit, and how does that affect DCR's effort? Does it make sense for Virginia to do this as a two-year permit?
  - What is happening with the other stormwater TAC? It would be useful to have a report from that.
- What are other states doing that is worth learning from or emulating?
  - What are other states doing specifically around numeric limits?
  - What language is there about transferring the permit during different phases, e.g., conveying lots to builders?
  - Perhaps review the Delaware regulations to see what they've been able to do (e.g., they limit the amount of disturbance that a builder can do without a special permit).
- What is the difference between a regulation, a permit, and a standard?
- How does DCR communicate with local E & S inspectors?
- What is considered a "larger common plan of development" – what guidance does EPA offer? Can we make clear what is meant by that term, specifically for non-residential?
- Will federal fees be changed also?
- What about relationship with this regulation requirements in jurisdictions with TMDL's?
- What sort of funding might be available to help with this?

### **Specific Concerns and Ideas**

#### Concerns:

- Several concerns about inconsistency between local and state inspectors:
  - The localities that review and approve may have different standards than the DCR inspectors who come after expensive improvements have been built and insist on changes.
- Several concerns about spotty compliance in different jurisdictions.
- Several concerns about the complexity of the regulation and the lack of understanding among contractors on the ground and local inspectors:
  - More than one party might file the permit application, as the construction operator has control of the actual site, and it's not clear whether we both file the application or not. Some of this has been worked out but it's an ongoing issue.
  - Some reviewers have far less experience than those preparing the plans.

- Several statements about the regulation not accomplishing its intended goals:
  - Activities are approved on waters that are already impaired.
  - Increasing development is causing increases in water quality problems.
  - Some of the biggest contributors to pollution are within the agricultural community, and it's not fair to put all of the burden on citizens and developers while ignoring disturbed land that large-scale agriculture produces.
  - Too little information is submitted to DCR, so that the public does not know what is happening.
  - Virginia does not begin to scrutinize permits' impacts on impaired waters unless it is a water that has had an approved TMDL.
- Concern with amount of change that might be made, even though they may need to be made:
  - Concern about backlash from the development community when the localities begin start enforcing what should have been enforced before.
  - Some of this is too intensely regulated, e.g., an applicant may be required not only to improve stormwater characteristics but to take it back to a forested area even if the land was a farm. DCR is using the regulation for restoration purposes, whereas any applicant should only be required to maintain or improve somewhat.
  - Concern with impact on localities.
- General technical concerns:
  - Lack of clarity for permit terminations and permit transfers.
  - Technical criteria (post-construction discharge requirements) – the state is trying to advance the provisions of the revisions without a regulation and is telling people that their permit should include it.
  - Consistency with other VSMP permits and regulations – going through the process again in the next 2 years.
  - Possible delegation to localities – impact and costs.
  - EPA intentions.

#### Ideas and Suggestions:

- Several ideas concerning jurisdictional variability and consistency of enforcement:
  - Address variability and consistency between local and state inspections and enforcement. The language should be written so that it is fair, which is important when there is an enforcement situation.
  - Increase enforcement - increase the permit fee by a factor of 3 or 4 to pay for additional enforcement (neighboring states are much higher), but don't include any type of sampling requirement. The compliance rate may be around 40% as it is and sampling is a greater cost to the program and therefore a disincentive to compliance. We should be focused on basic compliance of permit, SWPP, and inspections.
  - Have fewer permit reviewers and pay more attention to enforcement.
  - This regulation and permit would do better with increased cooperation with local programs around enforcement and reporting. This could help with inconsistency among localities and apparent uncertainty among localities about what is expected by DCR.

- *DCR could do much more in the way of outreach and education for contractors.*
  - *We need one person to speak to, not two sets of rules.*
- Federal entities want to deal with one entity, the state, as is done in other states such as Maryland and just as the state agencies have their permits and inspections overseen by the state.
- Several ideas concerning complexity of the regulation:
  - This is incredibly complicated, complex, and lengthy. There needs to be some type of condensed or clarified version so that the regulatory requirements can be understood.
  - The regulation needs to be clear when referencing standards.
  - There also needs to be a clear schedule around implementation right at the beginning, e.g., “all projects that are already permitted are required to...”
  - Clarify and delineate who is responsible for what.
  - We want the regulation written clearly enough so that jurisdictions and installations can do what they need to do, and we at least need to know the state’s thinking.
- Several ideas concerning following laws and policies intended to reduce impacts and improve water quality:
  - We should include monitoring along the lines of what is being done in some other states, specifically, turbidity.
  - Determine that BMP’s are actually working. Include water quality benchmarks, monitoring, and corrective action requirements to document and respond to site performance. This could be an added value to the permit.
  - Include narrative and numeric pollution limits on turbidity and phosphorous to comply with approved total maximum daily loads (TMDL), Chesapeake Bay Tributary Strategies, and Virginia water quality standards.
  - Include mandatory environmental site design requirements, such as phased grading or limitations on grading.
  - The timing of the issuance should not precede the design.
  - If a site reaches a certain size and impact, e.g., a contaminated stream, require an individual permit where impacts and issues are considered.
  - Larger agricultural operations could use some diversions and collection areas.
  - It should be possible to incorporate a clear discharge limit into the permit so that everyone knows what is expected.
    - *In some states that have turbidity standards, it is clear when a violation occurs.*
  - Ensure monitoring along the lines of what is being done in some other states, specifically for turbidity. There should be a step beyond limits to understanding whether this is actually working as a performance measure; that is, determine if BMP’s are actually working.
  - Virginia also needs to conduct an anti-degradation review that could be specific to the whole state or to specific watersheds.
  - Other states post on web sites permits that are about to be authorized.
  - We should seek ways to increase the scrutiny, including the SWIPPs.

- Several ideas concerning the need for caution in increasing regulatory burdens:
  - Come up with regulations that are based upon engineering and science as opposed to “feel-good” wording.
    - *Engineers are charged with caring for public welfare and they need to be able to use their knowledge. Hold the engineers liable but allow them to do their job.*
  - The cost should be a consideration; we need to take a hard look at what makes sense economically.
  - As localities assume more responsibility DCR should not go to numerical requirements, including measuring sediment, which has technical and implementation challenges.
  - I would like to see how we deal with the water quality and quantity aspect of this, especially where there is karst geology. We need to try to minimize volume changes, but how we can do that is problematic.
    - *There should be an option to do soil borings to see if karst is there rather than a blanket denial.*
  - Provide guidance/training on new requirements once the regulation is implemented.